IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4985 OF 2004

Sunil Narayan Koli ...Petitioner

Versus

Municipal Corporation of Greater Bombay & Ors. ...Respondents

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Mr. Y.S. Jahagirdar Sr. Counsel with G.S. Godbole, counsel for Petitioner

Mr. A.J. Bhor, counsel for Respondent No.1.

Mr. B.A. Nabar, counsel for Respondent No.3.

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CORAM: B. H. MARLAPALLE, J.

DATED: 14TH MARCH, 2005

P. C.:-

1. Heard Mr. Jahagirdar, the learned senior counsel with Mr. Godbole for the petitioner and Mr. B.A. Nabar, the learned counsel for respondent No.3. The respondent Nos. 1 and 2 are the formal parties.

2. Rule. Mr. Nabar waives service for respondent No.3 Returned candidate. By consent of the parties, the rule is taken for final hearing forthwith.

3. The respondent No.3 came to be elected as a Corporator of the respondent No.1 Corporation from Ward No. 135 reserved for O.B.C. and the said

election has been challenged by the petitioner in Municipal Election Petition No. 29 of 2004. After recording the evidence and when the petition was listed for final arguments, the petitioner had taken out interim notice No 331 of 2003 praying for relief to bring on record additional five documents as mentioned below:-

1. Certified true copy of letter dt. 8.11.2001 issued by the State Election Commission to various Municipal Corporation about the Pronouncement of the 2002 Elections to Municipal Corporations;

2. Original compendium of Election Commissioner's orders on Model code of Conduct, 1996 (2004 reprint edition);

3. Office copy of the letter dated 15.4.2004 sent by the Advocate for the petitioner to the State Election Commission, Maharashtra State and the Chief Election Officer, MCGM for issuance of certified copies of the letters contained therein;

4. Original letter dated 19.4.2004 issued by the Desk Officer, State Election Commission, Maharashtra State thereby informing that if the Hon'ble Court issues orders then the true copies of the letters issued by the State Election Commission would be issued;

5. Original Vol. III (Q-Z) of the Telephone Directory published by MTNL, Mumbai in the year 1999.

4. This application came to be rejected by the learned Additional Chief Judge, Small Causes Court at Mumbai on 23.4.2004 and hence, this petition.

5. Subsequently, when the election petition was taken up for final arguments another application was presented for adjournment of the election petition on the ground that the petitioner proposed to challenge the order dated 23.4.2004. Accordingly by order dated 7.5.2004, the learned Chief Judge had adjourned the election petition to 14.6.2004. The trial of the election petition has not progressed further.

6. In the impugned order, the court below noted that the interim notice No. 108 of 2004 was taken out by

the petitioner for issuance of summons to additional witnesses and by order dated 20.2.2004, the notice wad discharged. By amending the provisions of Order XVIII Rule 17 were deleted and therefore, it was observed by the Court below that the petitioner could not take resort to the said provisions which were not in existence. The evidence of both the parties was completed on 24.1.2004 and the application came to be filed when the petition was taken up for final arguments.

7. It is not in dispute that three additional issues came to be framed by an order dated 21.2.2003, in addition to the issues already framed in the election petition. The additional issues read as under:-

i) Whether the Petitioner proves that the Respondent No.3 has committed breach of Code of Conduct framed by the Election Commission ?

ii) Whether the Petitioner proves that the respondent No.3 has used more funds during the election for his compaign, than the funds prescribed by Election Rule ?

iii) Does the Petitioner prove that the Respondent No.3 is guilty of character assassination of the Petitioner in the eyes of the voters by publishing in newspapers ‘Samana’ issue dated 30.1.2002, ‘Ratnagiri Times’ issue dated 30.1.2002 and ‘Mahanagari Vartahar’ issue dated 9.2.2002 regarding his character ?

8. If regards be had to the first additional issue, it was necessary to bring on record the compendium of the model code of conduct framed by the Election Commission and it is nobody’s case that it is already on record. The other four documents may not be relevant. The compendium of model code of conduct being a public document, to facilitate the decision in the first additional issue, it could have been proper for the Election Petition Court to allow the same document to be placed on record and therefore, to this extent the application was required to be allowed. Having framed the additional issues, filing of the relevant public documents so as to facilitate the decision on such an issue could have been allowed even while the petition was being argued finally and the technicalities would not come in the way. Hence, the petition deserves to be allowed partly so as to

bring on record Compendium of Model Code of Conduct framed by the Election Commission.

9. In the result, the petition succeeds partly. The impugned order dated 23.4.2004 is hereby quashed and set aside and it is directed that the Item No.2 i.e. Compendium of Model Code of Conduct in the interim notice No. 331 of 2004 shall be taken on record and shall be considered for deciding the issues framed by the court below. The parties to appear before the learned Additional Chief Judge in Municipal Election Petition No. 29 of 2002 on 28.3.2005 at 11.00 a.m.

10. Rule made absolute in terms of the above directions. Interim order, if any, stands vacated.